IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

JUDGMENT

SB CIVIL MISC. APPEAL NO.3314/2005
Oriental Insurance Co. V/s Pappu & anr.

SB CIVIL CROSS OBJECTIONS NO.41/2006
Oriental Insurance Co. V/s Pappu & anr.

Date of order :: :: 8th November, 2006

PRESENT

HON'BLE MR. JUSTICE P.S. ASOPA

Mr.Digvijay Mantri with
Mr.Archana Mantri, for the Insurance Co.
Mr.Dinesh Kumar Garg, for the claimant-cross objector.

By this judgment, the appeal and cross objection arising out of the same award are being decided together.

The Insurance Company filed this appeal against the award dated 3.5.2005 in MAC case No.337/2004 passed by the MACT (Fast Track) No.1, Dholpur whereby the respondent No.1 injured has been awarded Rs.65,000/- considering 11 injuries and 40% permanent disability.

After service of notice, cross-objection has been filed by the respondent No.1 – Pappu for enhancement of compensation as mentioned above.

Briefly stated the relevant facts of the case are that at about 6 p.m. on 15.12.2001, the injured claimant was going towards his home and when he reached at Sakatpur, Kota, a speedy truck being driven by its driver rashly and negligently hit him resulting in injuries. The injured was taken to the hospital and Parcha Bayan was recorded, which was treated as FIR.

The Insurance Company filed reply and denied the averments made in the claim petition. It was specifically pleaded in the reply that number of the truck was not mentioned in the FIR and after investigation, F.R. in negative was filed as the vehicle could not be identified. It was also submitted by the Insurance Company in reply to the claim petition that claim petition has been filed in collusion with the owner of the vehicle with the further submission that the driver was not having any valid and effective driving license.

On the basis of the pleadings of the parties, five issues were framed, out of which issue No.2 & 3 are relating to breach of policy and not having valid and effective license by the driver.

Before the Claims Tribunal, the statements of

injured Pappu and one Devendra were recorded and both of them have specifically stated the number of truck in their statement. The FIR was also produced and it was marked as Ex.1. The other documents filed before the Claims Tribunal i.e. injury report, X-Ray report, permanent disability certificate, medical bills etc. have been exhibited as Ex.2, 3, 4 & 5 to 8 respectively.

The Tribunal after considering the injury report (Ex.2), X-Ray report (Ex.3), permanent disability certificate (Ex.4), Medical bills (Ex.5 to 8), receipts of taking treatment at Agra (Ex.11 to 15) and relying on permanent disability certificate, according to which, there was 40% disability on account of fracture in femur and right calibo bone, awarded Rs.40,000/- for 11 injuries resulting in 40% permanent disability, Rs.10,000/- for physical pain and mental agony, Rs.15,000/- for treatment. In all Rs.65,000/- has been awarded with 6% interest. However, in the last of the award Rs.40,000/- has been kept in FDR for a period of 7 years out of the said Rs.65,000/-.

The submission of counsel for the Insurance Company is that since the number of vehicle is not mentioned in the FIR, therefore, the Claims Tribunal

has committed illegality in relying on the oral statement of the injured and his witness Devendra. He further submits that driver was not having the valid license.

Counsel for the cross-objector submits that amount of Rs.40,000/- for 11 injuries resulting in 40% disability is on lower side and rest amount of Rs.25,000/- for treatment and medical bills is also required to be enhanced.

I have gone through the award of the Claims Tribunal and further considered the rival submissions of counsel for the parties.

In my view, the injured has categorically stated that Devendra has seen the occurrence and it is difficult to expect from the injured to mention registration number of the vehicle in the Parcha Bayan while taking treatment of 11 injuries. Subsequently, the injured Pappu and Devendra have categorically stated the number of vehicle and the Claims Tribunal has further considered that there is no material contradiction between the statement of injured and Devendra and further considered the fact that there is no evidence on record to prove that the driver was not having the valid license, therefore, both the issues

have rightly been decided against the Insurance Company.

As regard the submission of objector for enhancement of compensation, in my view, Rs.40,000/- for 40% permanent disability is not inadequate considering the further fact of award of Rs.25,000/- for treatment and physical pain and mental agony. Thus, in all award of Rs.65,000/- is adequate. But the question remains that whether out of Rs.65,000/- keeping Rs.40,000/- in fixed deposit for 7 years by the Tribunal is just and proper? In such circumstances, when the disabled person having 40% permanent disability needs the money for his day to day difficulties, therefore, in the present case, there was no justification for keeping the amount in fixed deposit.

In view of above, the appeal of the Insurance Company has no force and the same is rejected.

The cross objection for enhancement of compensation is not accepted, however the award is modified to the extent of release of Rs.40,000/- to the injured. The Claims Tribunal is directed to release the amount of Rs.40,000/- to the injured.

The cross objection is disposed of.

(P.S. ASOPA) J.

ummed/-